Memoir

OF

JUSTIN BUTTERFIELD

BY

John M. Wilson

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JOHN M. WILSON.

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JUSTIN BUTTERFIELD.

To the old residents of Chicago, the name of Justin Butterfield will recall the stalwart figure of one whose presence gave assurance to all beholders that they saw a man of strong individuality and mental power. He was born at Keene, New Hampshire, in 1790; commenced his education at the common school of the village, and was fitted for college under the tuition of the minister of the town, and entered Williams College at the age of seventeen, keeping school during the winter months, to liquidate his collegiate expenses—a custom still followed by the majority of students in New England colleges.

He commenced to study law in the office of Egbert Ten Eyck, afterwards Judge Ten Eyck, and was admitted to the bar at the age of twenty-two.

During his earlier years he exhibited the same characteristics which became so prominent in after life, illustrating the adage that the boy is father to the man.

He commenced the practice of law at Adams, New York, but soon after removed to New Orleans, where he was engaged in a lucrative practice, and obtained a high reputation as a lawyer. He returned to Watertown, New York, in 1816, and continued in successful practice until 1835, when he came to Chicago; but soon returned to Watertown, closed his business, and finally settled permanently in Chicago in 1837. He then formed a co-partnership with the late James H. Collins. They were both able lawyers, and had acquired a high reputation in the profession, and it is doing no injustice to other able lawyers in the State to say that the firm so constituted was the ablest, and transacted more business during its exist-

ence than any firm in the State. The partnership was dissolved some time during 1843; and Mr. Butterfield entered into partnership with Erastus S. Williams, a former student of Butterfield & Collins, and now the Hon. Erastus S. Williams, chancellor of the Circuit Court of Cook County. This partnership continued until Mr. Butterfield's acceptance of the office of Land Commissioner.

Mr. Butterfield's success in the profession resulted from what may be called the power of adaptation, always seizing upon the most effective mode of subserving the interest of his client.

Two cases, which were tried in the Court of Common Pleas of Jefferson county, New York, where he appeared for the defense, illustrate his tact and humor, and the adaptation of means to accomplish the desired result. One case was for libel by caricatures (during the anti-masonic excitement), representing two anti-masonic lecturers by the figures of a jackass and a kangaroo. The author of the caricatures was known, and there was conclusive

evidence to prove that two particular individuals were intended. One of them sued the author of the libel. Mr. Butterfield appeared for the defense. On the trial before a jury, Mr. Butterfield insisted to the court, that as there were two caricatures (describing with great humor the distinctive peculiarities of the jackass and the kangaroo), the plaintiff was bound to state which represented him, as he could not be represented by both. The court concurring in this view, the plaintiff's counsel selected the jackass as representing his client. It was impossible for the plaintiff to prove which caricature referred to him. Mr. Butterfield, in a caustic and humorous tone, but with great gravity, argued to the jury that the plaintiff resembled the kangaroo more than he did the jackass. The jury, influenced more by the wit and humor probably than by the evidence, instantly acquitted the defendant.

In the other case, also for libel, a man named Shaw, who had married the widow of Dennis Brooks, named Mary Brooks, sued one Dugan for writing and publishing a parody on the

Irish doggerel "Moll Brooks." Mr. Butterfield appeared for the defendant, but neglected to plead, making various excuses from time to time, until the case was called for trial. He then told the plaintiff's attorney to proceed, and he would plead the general issue and notice after they had proved their case—if they had any, which he doubted—but he would stipulate not to delay the trial.

The plaintiff's attorneys introduced proofs clearly establishing a most atrocious case of libel on the plaintiff. Mr. Butterfield then rose, and in his inimitable serio-comic tone, read his plea and notice in the presence of the court, jury, and a crowd of spectators, as follows:

JEFF. COMMON PLEAS.

DAVID DUGAN ads. JOHN SHAW, } ss. And the said defendant, by J. Butterfield, his attorney, comes and defends the wrong and injury when, etc., and says he is not guilty of the premises above laid to his charge, in manner or in form, as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, and the said plaintiff doth the like, etc.

SIR:—Please take notice that the defendant on the

trial of this cause, will give in evidence and insist, that all the gentlemen and *ladies* mentioned and described in the plaintiff's declaration are *Irishmen.* That Mrs. Mary Brooks, alias Molly Brooks, has long been the theme of poetry, and a faithful subject of the muses. That she is in fact the same identical Moll Brooks described in soft and melting strains in that popular and much admired song:

"Moll Brooks has gone to the war O,
And I'm afraid she never 'll return O."

But notwithstanding the fears and predictions of the immortal bard, the defendant will prove that in fact she did return from the "war O;" that Mr. Dennis Brooks afterwards won her innocent and unsuspecting heart. Her services in the "war O" had rendered her partial to a military life, and her dear husband, Mr. Dennis Brooks, in order to gratify the inclinations of his blooming bride, consented that she should open in Sacket's Harbor, for the especial accommodation of the soldiers and her old military comrades, an establishment vulgarly called a whiskey shop or rookery. An establishment of this kind was accordingly opened, in the conduct of which she played first, and Mr. Dennis Brooks second. In order to entice custom, a neat little Irish sign was purchased and placed over the door, on which was represented in lively colors, a jolly fat Irishman, straddle of a keg of whiskey, with a tumbler full of the same at his lips, just a trying the quality thereof. In the background was to be seen St. Patrick driving all the snakes and frogs out of Ireland. Many of the frogs and snakes had jumped off the sign and broke their necks on the sidewalk below, but a few were still

to be seen fleeing for their lives before the feet of the Saint. Although the snakes are much swifter on the foot than the frogs, yet on this sign the frogs were represented as hard upon the heels of the snakes, and the snakes to avoid being run over, were represented as just bolting the course. The defendant will further prove that after the procurement of this wonderful sign, business very much increased, insomuch that Moll Brooks could not attend to every call. She therefore hired Mr. John Shaw as a clerk, assistant and helpmate. And Mr. Dennis Brooks being weak and stricken in years, became sick, ailing and diseased, and finally died one day, leaving an afflicted widow. This tended to increase the family duties of Mr. John Shaw. He had not only to comfort the disconsolate widow, but to superintend and deal out whiskey at the Irish howl—which was held in due form and solemnity—over the remains of Mr. Dennis Brooks.

And the defendant will prove, as it became the duty of Mr. John Shaw after the demise of Mr. Dennis Brooks, to fill his place, that he thereupon, out of respect for the deceased, and in order to render his outward tabernacle agreeable to the eyes of the widow, stepped not into the shoes, but into the breeches, and some other of the vestments of Mr. Dennis Brooks, and wore the same.

And it will be proved, that thereupon Mr. John Shaw found favor in the eyes of Mrs. Molly Brooks, insomuch that as soon as the howl was over, she dried up her tears and was comforted.

And it will be proved that Mr. John Shaw did all in his power to repair the loss the concern had sustained in the demise of Mr. Dennis Brooks; that he

and Mrs. Molly Brooks continued business under the aforesaid wonderful sign. That they tended the shop, drank their whiskey, and eat their parraties together; that they lived together as harmoniously and innocently as two turtle-doves.

It will be further proved that the defendant, Mr. David Dugan, is a poet or Irish bard. That if said poetry was written by him at all, it was without any malicious or mischievous intention, but merely as a musical ode, dedicated to Mrs. Molly Brooks, in which the poet, whoever he might be, did her the honor to adopt her as the heroine. It is very questionable if Mr. John Shaw is at all alluded to in this ode. It is true the heroine is represented as having a lover, but whoever celebrated a damsel in prose or poetry without giving her a lover? It has become a custom from time immemorial, and poets have an inprescriptible right whenever they celebrate a hero, to give him a mistress, and a heroine a lover. It is a part of the scenery and imagery of the play.

Mr. David Dugan therefore solemnly protests against Mr. John Shaw arrogating to himself the exclusive honor of being considered the lover of Mrs. Molly Brooks described in the ode; but still if he insists upon it, and the court should permit him to bear away this palm, he has no right at all to complain of the part, for he is represented to do no more than it is the bounden duty of every true lover to do.

Mr. David Dugan will further prove that the poetry in question is one of the sweetest Irish melodies ever composed; that it is set to the tune of a popular Irish air, and when sung, accompanied by the bagpipe, no Presbyterian can hold his gravity. Mr. David Dugan

will further give in evidence, that since the last edition of the said ode, Mrs. Molly Brooks has slept with her fathers; that she left Mr. John Shaw heir to all her estate; that he celebrated the Irish howl over her remains, and now continues business at the old stand, in his own name, under the wonderful sign.

May God preserve you many years.

I am with great respect your obedient servant,

J. BUTTERFIELD, Att'y,
for Mr. David Dugan.

JONATHAN STEELE, Esq.
Att'y for Mr. John Shaw.

During the reading of the plea and notice, the court, jury, and the audience, including the plaintiff, were convulsed with laughter, and the whole matter was rendered so ridiculous that the jury, with the rapturous concurrence of the audience, rendered a verdict of "not guilty." The defeat of the plaintiff was so much in harmony with public sentiment, that he never commenced a new action, though the whole proceedings before the court were irregular.

This mode of defense, if it can be called such, is not unfrequently resorted to in cases of libel and slander, but it is a dangerous experiment, and is rarely, if ever successful, where the prose-

cution is conducted by able and vigilant counsel. Mr. Butterfield possessed an intuitive appreciation of the strength and resources of his adversary, and was the last man to attempt to laugh a case out of court, unless the prosecution was feeble or the plaintiff and his case was subject to the assaults of ridicule and sarcasm.

Mr. Butterfield first came to Chicago early in the spring of the year 1835. At that time what is now the business portion of Chicago, was a swamp, and the improvements consisted in a few log and wooden buildings, among which were a court house and two hotels—one called the Sagannash, kept by one Davis, and the other the City Hotel, kept by Mark Beaubien. Mr. Butterfield then attended the first Circuit Court held in Cook county, as a spectator. The Hon. Sidney Breese, late Chief Justice of the Supreme Court, presided, and a suit was being tried by a jury. Hon. J. D. Caton, and the late Giles Spring, represented the respective parties. A greater contrast could not well exist between two men of the same

race. One, tall, strong-limbed, self-possessed and deliberate in his movements—the other, short, slim and impulsive. Mr. Butterfield forecast the future of these two men on leaving the court, remarking "the little fellow" (refering to Spring) "will soon wear himself out," and in answer to the question (how about the big fellow), he said: "Oh he will hardly die when his time comes." Judge Spring died in his prime, by the over-action of his nervous system; Judge Caton still retains his constitutional vigor, and with constant labor seems from year to year to increase in intellectual strength.

Mr. Butterfield rarely indulged in flights of fancy, though he never failed to lighten up his addresses to Court or jury with a caustic humor which was always effective—his manner giving point and force to the words. The high position which he attained was owing to his intuitive apprehension of the questions upon which cases must be decided, and by adapting his mode of attack or defense to the peculiar circumstances of each case. His power of adap-

tation, or "how to do it," made him eminently practical, even in matters not properly within the scope of the legal profession. This is well illustrated by reference to his services in relation to the plan for the completion of the Illinois and Michigan Canal, and the Illinois Central railroad. The attempt by legislative enactment to traverse the State by railroads, connecting every little town and village, though a magnificent scheme on paper, was a disastrous failure in practice, and brought the State to the verge of repudiation. The crisis came in 1842. Work was stopped and most of the roads were abandoned. This state of affairs stopped work also on the Illinois and Michigan Canal, the completion of which the people of Chicago and the canal towns believed to be essential to their future growth and prosperity. Under these circumstances Mr. Butterfield, after conferring with Arthur Bronson and the Hon. Isaac N. Arnold, suggested pledging the canal lands and tolls for money to complete the canal on the shallow-cut plan, so-called. After consultation with the bond-

holders, a new survey was made and estimates of cost furnished, upon which the bondholders agreed to furnish the necessary funds. Mr. Butterfield then drew the Canal Bill of 1842–'3, under which the bondholders advanced $1,600,000, with which the canal was completed. As every one did what they could to hasten the completion of the canal, there will probably be a difference of opinion in relation to the proper distribution of the honors; but all will concede that to Messrs. Butterfield and Arnold belong the credit of perfecting the plan that resulted in its completion. It was for many years in the northern portion of the State the great and absorbing question of the time. It is now in the dim distance of more than thirty years. A new generation occupies the places of those who labored to accomplish what as an accomplished fact excites no interest in this era, when important events become stale news in a few fleeting hours.

But the greatest service rendered to the State by Mr. Butterfield, was his action in rela-

tion to the Illinois Central Railroad. He first suggested to Senator Douglas an act of Congress donating the right of way through the public lands, and a portion of the lands to a corporation to be authorized by the Illinois legislature. The act of Congress and of the Illinois legislature in relation to the Illinois Central Railroad, were the joint production of Senator Douglas and Mr. Butterfield, though the details were changed in many particulars by sectional influences.

The original plan contemplated connecting Chicago and Cairo by a short line running through as many sections of government land as was practicable and consistent with a rapid and convenient transit. By the act of the legislature Chicago is not one of the termini, but the terminus of a so-called branch, and is a striking illustration of the folly of attempting to control commerce by legislation in a free government. Most of the business has always been done upon the so-called branch and that portion of the main line south of its junction, and practically commerce and travel

follow the same direction indicated in the original plan. This road has greatly increased the population and wealth of the State, and by the payment annually of seven per cent. of its gross earnings into the State treasury, has materially lessened the amount and burden of the State taxes. The passage of both of the acts was largely due to the exertions and influence of Senator Douglas.

Mr. Butterfield was counsel for the Shawneetown bank in the litigation known as the bank controversy. The constitution of Illinois of 1818 provided there should be no bank except the State bank and its branches, and the banks then in existence.

The Shawneetown bank was chartered before that time, but in 1835 its charter was extended. A quo-warranto was issued against the bank by the Supreme Court, and argued before that court by Josiah Lamborn, Attorney-General, and Lyman Trumbull for the State.

In the argument of the case it was contended by the counsel for the State, that the extension of the charter was in law and in fact

the creation of a new bank. Mr. Butterfield, in answering this position, said he would like to be informed by the gentleman if they had met with it in their reading (which he very much doubted), whether when the Lord lengthened the life of Hezekiah fifteen years, he had made a new Hezekiah, or was he still the same old Hezekiah.

The court decided in favor of the bank and dismissed the quo warranto proceeding, deciding, as Mr. Butterfield afterwards said, that the Shawneetown bank was the same old Hezekiah.

But the case where he exhibited more of his peculiar traits than in any other, was the most notorious case, to say the least, ever tried in the west, and if intense excitement and general interest is the true criterion, it was one of the most important cases ever decided in the United States. It grew out of which is known as the Mormon difficulty, which for many years was a disturbing element in the politics and social relations of the State.

Governor Ford issued his warrant for the arrest of Joe Smith, the so-called Mormon

prophet, as a fugitive from justice for an offense committed in Missouri. A writ of habeas corpus was issued from the United States Court, and Smith was brought before Judge Pope at Springfield. The excitement between the Mormons and anti-Mormons was at this time at its heighth, and both parties were ready to adopt any desperate measure that promised victory. The court room was crowded with eager spectators, and on either side of Judge Pope were seated a large number of beautiful women, elegantly dressed in the fashion of the day. Mr. Butterfield appeared as Smith's counsel, and after order was restored he arose, and assuming his gravest aspect, addressed the court as follows:

"May it please the Court—On this unprecedented occasion I appear before the Pope, in the presence of the angels (waving his hands to the ladies seated on the right and left of the Judge), in behalf of the Prophet of the Lord, to plead for liberty, personal freedom, secured to every citizen in this broad land by the Constitution of the United States." Josiah

Lamborn, Attorney-General of the State of Illinois, a gentleman of great legal learning and eloquence, appeared to resist the discharge of Smith, and moved to dismiss the proceedings for the want of jurisdiction, on the ground that the detention of Smith was not under or by color of authority of the United States, or any officer of the United States, but under and by color of the authority of the State of Illinois, and argued with great plausibility that when a fugitive from justice is arrested by authority of the Governor of any State, upon the requisition of the Governor of another State, the courts of justice, neither state nor federal, have any jurisdiction to inquire into any facts excepting those set forth in the writ. The counsel for Smith read in evidence the affidavits of several persons, showing conclusively that Smith was at Nauvoo, in the county of Hancock, in the State of Illinois, on the 6th and 7th days of May, in the year 1842, and on the evenings of those days, more than 300 miles distant from Jackson county, in the State of Missouri, where it was alleged that

Boggs was shot, and that he, Smith, had not been in the State of Missouri at any time between the 10th day of February and the first day of July, 1842. That on the sixth day of May aforesaid said Smith attended an officers' drill at said Nauvoo, and on said 7th of May he reviewed the Nauvoo Legion in the presence of many thousand people. Mr. Butterfield, in closing the argument, contended that the court had jurisdiction. That the requisition purported upon its face to be made, and the warrant issued under the constitution and laws of the United States in regard to the surrender of fugitives from justice, and that when the rights of persons were invaded under the laws of the United States, they have no remedy except in the courts of the United States. That the whole power in relation to the delivering up of fugitives from justice had been delegated to the United States, and that Congress only had power of regulating the manner in which it should be exercised. That the power was exclusively under the control of Congress, and the acts of state legislatures

in relation to the subject were unauthorized and void. That the United States courts had exclusive power to issue writs of habeas corpus when a prisoner is confined under or by color of the authority of the United States. These views were enforced and illustrated by Mr. Butterfield to the satisfaction of the Court, and Judge Pope, in an able opinion delivered by him, endorsed the positions assumed by Mr. Butterfield (as will be seen in the report of the case in 3d McLean's Reports, page 121), and discharged Smith. Many of the points made in this case are of first impression; no case being found in the books that can be considered as authority. This is regarded as the earliest and leading case upon many of the questions raised. A mere "case" lawyer would have been entirely at sea in arguing such a case before this decision was made.

Soon after the inauguration of President Taylor, a vacancy occurred in the office of Commissioner of the Land Office. The applicants for the position were Abraham Lincoln and Justin Butterfield, each supported by numer-

ously signed petitions, and both repaired to Washington to urge their respective claims. Much to the disappointment of Mr. Lincoln and his friends, Mr. Butterfield received the appointment. There was a striking similarity between the two men in many particulars. Each was regarded as the ablest lawyer in the State by the respective sections north and south. They were both dark complexioned, and of a billious nervous temperament, both remarkable for self-possession, and that command of expression that never betrayed surprise or confusion; both distinguished for humorous and quaint expressions and illustrations in the gravest arguments before court or jury. The contrast between them was equally striking. Mr. Lincoln was mild and gentle in manner and familiar in his intercourse with all classes. On the other hand, Mr. Butterfield was brusk, and in his intercourse with his inferiors exhibited a consciousness of his superiority by a curt and peremptory tone. The humor of Mr. Lincoln was characterized by a vivid sense of the ridiculous, but was untainted

with bitterness. Mr. Butterfield was caustic and severe. Mr. Lincoln, though not avaricious, was prompt in a transaction of business, both in paying and collecting debts. Mr. Butterfield seemed to have no appreciation of the value of money except for present use, and manifested perfect indifference in relation to debts which he owed to others. This characteristic of Mr. Butterfield was illustrated in the case of a persistent dunner and collector, who having exhausted Mr. Butterfield's patience, received from him a due bill payable "to-morrow" without date. On the next day the collecter presented the bill. Mr. Butterfield remarked to him, looking at the bill: "You are a pretty fellow to present a bill before it is due. It ain't to-morrow yet." After enjoying his joke for a few minutes, he paid it.

Many anecdotes illustrating his quaint humor are told by the older members of the bar, but the point and force of most of them depend so much upon the manner and tone, that those only who knew him could appreciate them.

His manner and expression were eminently dramatic, following unconsciously the directions of Hamlet to the players, "suiting the action to the word, and the word to the action."

In discussing a constitutional question before the Supreme Court of this State, he referred to a decision of the same court, when organized so that the judges performed circuit duties, and then sat in bank to review their several decisions upon appeal or writs of error, and remarked that if the constitutional convention had anticipated the natural and inevitable result of such an organization, it would undoubtedly have provided for an appeal from that court to two justices of the peace. On leaving the court room some one remarked: "You were rather severe on the Court." "Poh!" said he, "that was a cut at the justices." Walking one day on the sidewalk, he met a lawyer by the name of Phelps, who had no office, but picked up what little business he had by soliciting clients on the sidewalk near the offices of the justices of the peace. Mr. Butterfield, stamping his feet as

if shaking off mud, in a gruff and reproachful tone exclaimed: "Phelps, why don't you sweep out your office?"

During Polk's administration after war had been declared against Mexico, some one asked him if he was in favor of the war, and he answered: "I blasted my political prospects by opposing the war of 1812, and ever since that I have been in favor of war, pestilence and famine, offensive or defensive."

David A. Smith, of Jacksonville, was one day sitting in the United States Court room sleeping, the sun shining on his bald sleek head. Some one directed Mr. Butterfield's attention to him, when he instantly exclaimed: "The light shineth upon darkness, but the darkness comprehendeth it not."

While he was District-Attorney, Ben Bond was United States Marshal, and two of his brothers were his deputies. Butterfield was greatly annoyed by them, and at one time his patience was tried beyond endurance, and he exclaimed: "I would to God that not only thou but all that hear me this day, were both

almost and all together such as I am, except these Bonds."

The success of Mr. Butterfield as Commissioner of the Land Office, was such as might be expected from his eminent ability, and upon his resignation he received a flattering letter from President Filmore, recognizing his efficiency and ability displayed in that office. When he arrived at Washington he found that the business had been conducted on the plan of Dicken's circumlocution office. "How not to do it" seemed to be the laborious effort of the numerous employees and clerks. This he reformed, and introduced system and order in the transaction of business.

In inaugurating this reform, his labors were continuous and exhausting, and as the result, he was stricken with paralysis. He lingered after being paralyzed, in a feeble condition, until October 23, 1855, when he died at his home in Chicago, and was buried in Graceland cemetery.

Mr. Butterfield was married to Elizabeth Pierce, of Schoharie, New York, to whom

were born eight children—five sons and three daughters. Two of the daughters only survive: Elizabeth, wife of Doctor Sidney Sawyer, of Chicago, and Adeline, wife of Francis Gillatly, of New York city. He was fortunate in his domestic relations. His wife was happily capable of appreciating him, and her constant effort to make his house attractive and cheerful made his residence what no multiplication of superlatives can express—a home.

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